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THIS DISPOSITION IS NOT
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THE TTAB

Paper No. 12

HRW

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Indspec Chemical Corporation

Serial No. 75/706,371

Diane R. Meyers of Eckert Seamans Cherin & Mellott, LLC
for Indspec Chemical Corporation.

Jennifer Stiver Chicoski, Trademark Examining Attorney, Law
Office 115 (Tomas V. Vlcek, Managing Attorney).

Before Cissel, Wendel, and Rogers, Administrative Trademark
Judges.

Opinion by Wendel, Administrative Trademark Judge:

Indspec Chemical Corporation has filed an application
to register the mark HER for "chemicals, namely aromatic
diols for use as polymer components or additives in
manufacturing."¹

Registration has been finally refused under Section
2(e)(1) on the ground that the mark is merely descriptive

¹ Serial No. 75/706,371, filed May 14, 1999, claiming a first use
date and a first use in commerce date of February 1997.

when used in connection with applicant's goods. The refusal has been appealed and both applicant and the Examining Attorney have filed briefs. An oral hearing was not requested.

The Examining Attorney maintains that applicant's mark HER is merely an abbreviation or acronym for one or more of the common commercial names for applicant's goods. She notes that the goods, while referred to on the specimens by the chemical name "1,3 bis(2-hydroxyethoxy) benzene", are elsewhere referred to by the name "hydroxyethyl ether of resorcinol" or "resorcinol di(beta-hydroxyethyl) ether." Applicant acknowledges that the compound has at least these three names. The combined letters HER, the Examining Attorney argues, are simply a shorthand reference for or abbreviation of these common names which has been used in technical journals and writings for purposes of simplification. As such, she maintains that HER does not identify applicant as the source of the goods, but rather identifies the material itself. The additional terms TG, LIQ and HP are noted as being used on the specimens and elsewhere to designate different grades or versions of the material.

In support of her position, the Examining Attorney has made of record several articles from the NEXIS database, of which the following are representative:

Indspec has started the manufacture of hydroxyethyl ether of resorcinol (HER), a diol chain extender.
Chemical Business Newbase (April 29, 1999);

Indspec said elastomers made from the higher molecular weight diols HER-LIQ and HPER were softer than HER- or HQEE-based elastomers.
Urethanes Technology (February 1, 1999); and

Indspec has established commercial-scale production of hydroxyethyl ether of resorcinol (HER) and has the capability of ...
HER, a 1,3 isomer similar to HQEE, has been found to be much more user friendly than its 1,4 cousin. The lower melting point of HER...
Plastics Engineering (November 1998).

Two articles which originate from applicant itself contain references to HER in the following manner:

... aromatic diol extenders, such as the bis-(hydroxyethyl) ether of resorcinol(HER) and hydroquinone(HQEE) often are used. ...
Based on the structures of BD and HER, it can be expected that the HER-based hard segments would have a longer chain ...
To demonstrate that HER has better physical and mechanical properties ...
Rubber and Plastics News (November 29, 1999); and

To maintain mechanical properties at elevated temperature, aromatic diols such as bis([Beta]-hydroxyethyl)ether of resorcinol (HER) and
Because HER and HQEE possess similar molecular structures ...
Indspec Chemicals is in the process of developing a Technical Grade HER material for cost sensitive
The major difference between the high purity (HP) and Technical Grade (TG) HER materials is associated with...

Adhesive Technology (March 1, 1999).

In addition, the Examining Attorney has made of record copies of a web page of a third party as well as two patents obtained by companies other than applicant in which reference is made to HER without any acknowledgement of any trademark rights in the designation.

Applicant contends that HER is an arbitrary term being used by applicant to identify its brand of aromatic diols, which have several chemical names. Applicant argues that HER is not merely descriptive in that it does not immediately convey the name of the goods. Insofar as the articles relied upon by the Examining Attorney are concerned, applicant argues that because these articles are about applicant's products, they reflect trademark usage of HER, in that they show that applicant is the source of these goods. Finally, applicant contends that HER could stand for any number of chemical products, naming several possibilities.

A term or phrase is merely descriptive within the meaning of Section 2(e)(1) if it immediately conveys information about characteristics, features or qualities of the goods or services with which it is being used. See *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978). Whether or not a particular term or phrase is

merely descriptive is determined not in the abstract, but rather in relation to the goods or services for which registration is sought, the context in which the designation is being used, and the significance the designation is likely to have to the average purchaser as he or she encounters the goods or services bearing the designation, because of the manner in which it is used. See *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979).

We find the articles made of record by the Examining Attorney, in particular those quoted above, clear evidence that HER has been adopted by both applicant itself and others in the trade as a shorthand means of referring to an aromatic diol product, namely, the hydroxyethyl ether of resorcinol. There is no indication anywhere in these articles that HER is being used in a trademark sense to refer to the source of applicant's goods; instead, HER is simply being used as an abbreviation or shorthand means of referring to the product itself, in the same manner as other shorthand terms such as HQEE are being used to refer to other products. Clearly, people reading these articles, who presumably would be potential customers for these products, upon seeing the manner in which HER is being used, would view HER as referring to the particular material, rather than indicating the source thereof. HER

merely conveys information as to the nature of the specific product, and as such, is merely descriptive. Although applicant argues that it should not be penalized for the failure of others to acknowledge its trademark rights, applicant itself has used HER in the same descriptive manner. Cf. *In re Pharmaceutical Innovations, Inc.*, 217 USPQ 365 (TTAB 1983)(evidence of the context in which the mark is used in advertising materials is probative of the reaction of prospective purchasers to the mark).

While the Examining Attorney has made references to HER being generic in that it is an abbreviation for a common name for the goods, the issue of genericness is not before us. The only question is mere descriptiveness. Whether or not applicant's goods have more than one common name and whether or not HER might be viewed as an acronym for any one of these common names is irrelevant. The fact remains that HER is being used in a descriptive manner to refer to the nature of the goods and would be perceived as such by prospective purchasers.

Applicant's argument that HER could equally well refer to other chemical compounds is to no avail. As pointed out above, the letters HER are not considered in the abstract, but in relation to the particular goods with which they are being used. Here, HER is being used in connection with

aromatic diols, and the evidence shows that HER is being used in a descriptive manner as a shorthand means of referring to a particular diol.

Finally, applicant argues that consideration should also be given to the fact that the mark HER was previously registered to a predecessor company for the same goods, although cancelled in 1985 under Section 8. We agree with the Examining Attorney that the descriptive use of HER in the interim has been such that potential purchasers would no longer view the abbreviation HER as a mark, but rather as a descriptive designation referring to the material itself.

Decision: The refusal to register under Section 2(e)(1) is affirmed.

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